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Law Office of J. Nicholas Gross, Prof. Corp.
PO BOX 9489
BERKELEY, CA 94709

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eofficeaction@appcoll.com
jngross@pacbell.net
anthonygreek@gmail.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN NICHOLAS GROSS

Appeal 2015-003930[1]
Application 12/973,378
Technology Center 2100

Before: MURRIEL E. CRAWFORD, MICHAEL W. KIM, and NINA L. MEDLOCK, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the Final Rejection of claims 1–5 and 7–32.[2] We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to "delivering content relevant advertisements within a conventional Internet based search query interface or similar interface used in a web log (blog)." Spec. 1:23–26.

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[1] The Appellant identifies "J. Nicholas & Kristin Gross Trust U/A/D 4/10/2010" as the real party in interest. Appeal Br. 2.

[2] We note that claims 28–32 appear to be missing from the Claims Appendix of the Appeal Brief. For those claims, we refer to page 7 (sheet labelled as page 8) of the claims listing included with the Appellant's "Amendment C & Response" filed December 3, 2013. A copy is attached as Exhibit A.

Independent claim 1 is illustrative:

> 1. A method of using a computing system to present advertising information within a web log (blog) page comprising:
>
> compiling blog content extracted from the blog page with the computing system to identify a first set of blog page topics;
>
> generating a set of search results with a search engine from a webpage term index based on a query automatically constructed by the computing system from said first set of blog page topics;
>
> wherein said search results include references to one or more separate webpages;
>
> processing content extracted from selected ones of said one or more separate webpages referenced in said search results with the computing system to identify one or more second topics in said set of search results;
>
> presenting at least one first advertisement with the computing system within the blog page in response to said query based on matching content associated with said at least one first advertisement to said one or more second topics.

Claims 12, 17–22, and 28–32 are rejected under 35 U.S.C. § 101 as failing to recite subject matter that falls within a statutory category.

Claims 1–5 and 7–32 are rejected under 35 U.S.C. § 103(a) as unpatentable over Allsup (US 2005/0283464 A1, pub. Dec. 22, 2005) and Dean (US 7,716,161 B2, iss. May 11, 2010).

We REVERSE.

ANALYSIS

Rejection of Claims 12, 17–22, and 28–32 Under 35 U.S.C. § 101

We are persuaded the Examiner erred in asserting that claims 12, 17–22, and 28–32 fail to recite subject matter that falls within a statutory category because, according to the Examiner, "computing system" and "computing machine system" are software. App. Br. 15–17; Reply Br. 9–

10. Each of independent claims 12 and 28 recites "a computing machine system adapted to execute a plurality of machine executable routines." We are unclear as to how software can be "adapted to execute" anything, let alone "a plurality of machine executable routines," as the software is the routine itself. Furthermore, the Specification discloses "client device (i.e., some form of computing system)." Spec. 12:11–12. The Examiner has not addressed this disclosure, for example, why a "computing machine system" is not a "device," which would appear to be structure, and not software.

We do not sustain the rejection of independent claims 12 and 28, or their respective dependent claims, under 35 U.S.C. § 101.

Rejection of Claims 1–5 and 7–32 Under 35 U.S.C. § 103(a)

We are persuaded that the Examiner erred in asserting that Allsup discloses "compiling blog content extracted from the blog page with the computing system to identify a first set of blog page topics" and "generating a set of search results with a search engine from a webpage term index based on a query automatically constructed by the computing system from said first set of blog page topics," as recited in independent claim 1. App. Br. 10–15; Reply Br. 2–8. Independent claims 11, 12, 23, and 28 each recites similar limitations. The Examiner first appears to map the set of search results 302 of Allsup to both the recited "first set of blog page topics" and "set of search results . . . based on a query automatically constructed . . . from said first set of blog page topics." Final Office Action 4–5. We are unclear as to how the set of search results 302 of Allsup can be based on a query of itself, as would be required to meet the aforementioned "generating" step.

In the Answer, the Examiner asserts that the set of search results 302 of Allsup corresponds to the recited "first set of blog page topics," and then appears to assert that, for the aforementioned "generating" step, "it is understood that when one of the topics/hyperlinks is select[ed], [the] system will automatically construct[] a query to generate a second set of search results, as [a] second set of topics, based on the select[ion] from [the] first set of topics." Ans. 4. In other words, the Examiner appears to assert that Allsup discloses a selection of one of the topics/hyperlinks from the set of search results 302 results in a second, different set of search results. The Examiner has not cited any evidence or provided any reasoning in support of this assertion. Instead, we discern that selection of one of the topics/hyperlinks from the set of search results 302 results in the presentation of the webpage associated with that topic/hyperlink. The Examiner also does not rely on Dean for remedying the aforementioned deficiencies of Allsup.

We do not sustain the rejection of independent claims 1, 11, 12, 23, and 28, or their respective dependent claims, under 35 U.S.C. § 103(a).

DECISION

We REVERSE the rejection of claims 12, 17–22, and 28–32 under 35 U.S.C. § 101.

We REVERSE the rejection of claims 1, 11, 12, 23, and 28, and their respective dependent claims, under 35 U.S.C. § 103(a).

REVERSED